KARL
RECEIVED
MAR 31 2005
DEPARTMENT OF WATER RESOURCES

John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis

BARKER ROSHOLT & SIMPSON LLP

113 Main Ave. W., Suite
Twin Falls, ID 83301-6167
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

205 N. Tenth St., Suite 520
P.O. Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

Travis L. Thompson
tlt@idahowaters.com

March 28, 2005

Via Email & U.S. Mail

Karl J. Dreher, Director
Idaho Department of Water Resources
The Idaho Water Center
322 E. Front Street
P. O. Box 83720
Boise, ID 83720-0098

Re: Idaho Ground Water Appropriators' Motion for Summary Judgment in the Matter of the Request for Administration in Water District 120 and the Request for Delivery of Water to Senior Surface Water Rights by A & B Irrigation District, American-Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company

Dear Director Dreher:

It appears, from the copy of the document received by members of the Surface Water Coalition ("Coalition") that there was filed with you by the Idaho Ground Water Appropriators a document entitled *Motion for Summary Judgment and Memorandum in Support* dated March 23, 2005 and signed by Jeffrey C. Fereday and Michael C. Creamer of Givens Pursley, LLP, attorneys for Idaho Ground Water Appropriators, Inc. ("IGWA"). This document clearly indicates on its face that it is being filed in response to the written request by the Coalition for water right administration in Water District 120 and a request for delivery of water to senior surface water rights held by members of the Coalition. The Director has responded to the Coalition's *Request* for delivery of water ("delivery call") through informal proceedings in this contested case as authorized by Rule 100 of subchapter A to the Rules of Procedure of the Idaho Department of Water Resources (IDAPA 37.01.01.100). Informal Procedures are to be used in informal proceedings pursuant to Rule 101 (IDAPA 37.01.01.101).

For the above reasons, the filing of a *Motion for Summary Judgment* is neither authorized nor appropriate in these informal proceedings, and IGWA's *Motion for Summary Judgment and*

Memorandum in Support should be stricken as an attempt to apply formal rules of procedure, including the Idaho Rules of Civil Procedure, in an informal proceeding by which there is no provision for filing formal pleadings. The fact that IGWA, the alleged representative of certain unnamed ground water diverters from the Eastern Snake Plain Aquifer, referred to the members of the Coalition as "petitioners" in its *Petition to Intervene* did not establish that the members of the Coalition are petitioners for purposes of the Department's rules of procedure. Members of the Coalition are requesting water right administration and delivery of water to their senior surface water rights. The *Request* did not constitute initiation of formal proceedings under Rule 104 of the Rules of Procedure of the Idaho Department of Water Resources. By objecting to the filing of the formal *Motion for Summary Judgment*, it should not be interpreted as an objection to the filing of documents upon request by the Director in these informal proceedings.[1]

Although the members of the Coalition deny all material legal and factual allegations contained in IGWA's *Motion for Summary Judgment and Memorandum in Support,* which objections are apparent in most instances on the face of the *Motion* and *Memorandum*, it is essential to confirm that the Coalition is not required to respond to the *Motion for Summary Judgment* as provided by Rule 270 of the Department's rules of procedure or Rule 56 of the Idaho Rules of Civil Procedure. In any event, affidavits and memorandums of the law and facts will be submitted to further support the Coalition's *Request* for water right administration. It is essential that the Director immediately continue with these informal proceedings as he has indicated he would proceed in his *February 14, 2005 Order*, without delay, and specifically without delay based upon the inappropriate non-authorized filing of a formal *Motion* by IGWA with an obvious purpose of delaying action by the Director on the Coalition's *Request*.

It is also respectfully submitted to the Director that every effort should be made to clarify to IGWA and others that these informal proceedings and the Director's ultimate response is limited to the Coalition's *Request* for distribution of water to its members by the administration and curtailment of ground water rights within Water District 120. The Director should also point out to IGWA, which appears to be somewhat confused, that the *Petition*, not the informal *Request*, addresses administration of ground water rights that are not located within an established water district and that such *Petition* is in the process of being served upon the holders of said ground water rights that are subject to the delivery call of the Coalition. Until such time as a water right holder has been served with notice of the filing of the *Petition*, no opportunity for a response has been made available.

Finally, the Coalition wishes to reiterate that it is, and has always been, willing to provide any relevant information that its members possess and supplement the information provided to the Director for purposes of issuing an order in response to the Coalition's *Request* for water right administration in Water District No. 120. *See Surface Water Coalition's January 14, 2005*

---

[1] By way of example, the Coalition members filed a document entitled *Petitioners' Joint Response to Director's February 14, 2005 Information Request.* The information was provided jointly as a matter of convenience for the Director. The information was provided both for the informal proceeding relating to the Coalition's request for water right administration in Water District No. 120 and for the *Petition* regarding water right administration of junior priority ground water rights located within the boundaries of the Eastern Snake Plain Aquifer but outside the boundaries of established water districts.

Letter, p. 4, n. 5, *Petitioners' Joint Response to Director's February 14, 2005 Order* at 6. To date, the Coalition has not received any additional requests for information.

To the extent the Director believes otherwise regarding the matters contained in this letter herein, the Coalition would request notification of the same as soon as possible.

Very truly yours,

John K. Simpson
Travis L. Thompson

Attorneys for Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company

Roger D. Ling

Attorney for A & B Irrigation District and Burley Irrigation District

W. Kent Fletcher

Attorney for Minidoka Irrigation District

C. Tom Arkoosh

Attorney for American Falls Reservoir District #2

cc: Jim Tucker, c/o Idaho Power Company
Jim Lochhead, c/o Idaho Power Company
Kathleen Marion Carr, c/o U.S. Bureau of Reclamation
Scott Campbell, c/o Idaho Dairyman's Association
Michael Creamer, c/o IGWA
IDWR, Eastern Regional Office
IDWR, Southern Regional Office